

## INDEX.

	Page
Opinion below .....	1
Statement of jurisdiction.....	1
Questions presented .....	5
Statutes involved .....	5
Statement .....	6
Specification of errors.....	8
Summary of argument.....	9
Argument .....	13
(A) The legislative classification of Ordinance 46222 taxing gross income (without deductions) to wage earners and net profits (with deductions, including income taxes) to self-employed per- sons, partnerships and corporations violates the equal protection clause of the Fourteenth Amendment .....	13
(B) The discriminatory administration of Ordinance 46222 against wage earners as a class renders the earnings tax Ordinance constitutionally vio- lative of the equal protection clause of the Four- teenth Amendment .....	19
(C) The question of the discriminatory administra- tion of Ordinance 46222 in violation of the equal protection clause of the Fourteenth Amendment is amply raised by the record and is a claim of federal right, review of which cannot be fore- closed by so-called local practice.....	24
Conclusion .....	25

Appendix .....	27
R. S. Mo. 1949, V. A. M. S., Chapter 92, Sections 92.110-92.200 .....	27
Ordinance 46222 of the City of St. Louis.....	30
Rules and Regulations to Ordinance 46222, Regula- tion 2 .....	41
Certificate of service.....	43

### Table of Cases Cited.

Brown v. Western Ry., 338 U. S. 294.....	12, 24
City of Louisville v. Sebree, 308 Ky. 420, 435, 214 S. W. 2d 248, 256.....	10, 15, 18, 19
Colgate v. Harvey, 296 U. S. 404.....	14, 15
Concordia Insurance Co. v. Illinois, 292 U. S. 535. .	12, 22, 25
Dole v. City of Philadelphia, 337 Pa. 375, 11 A. 2d 163 .....	15, 18
Dulac Cypress Co. v. Houma Cypress Co., 104 So. 722, 158 La. 804.....	18
Independent Warehouse, Inc., v. Scheele, 331 U. S. 70	2
Iowa-Des Moines Bank v. Bennett, 284 U. S. 239. ....	12, 22
Jamison v. Texas, 318 U. S. 413.....	2
King Manufacturing Co. v. City Council of Augusta, 277 U. S. 413.....	2
Louisville Gas Co. v. Coleman, 277 U. S. 32.....	14
Madden v. Commonwealth of Kentucky, 309 U. S. 83. .	14, 15
Quaker City Cab Company v. Commonwealth of Penn- sylvania, 277 U. S. 389.....	9, 15
Royster Guano v. Virginia, 253 U. S. 412.....	14, 19
Wheeling Steel Corp. v. Glander, 337 U. S. 562....	12, 23, 25
Yick Wo v. Hopkins, 118 U. S. 356.....	12, 25

**Miscellaneous Cited.**

Constitution of the United States, Fourteenth Amendment .....	3, 5, 8, 25
Ordinance 46222 of the City of St. Louis.....	3
R. S. Mo. 1949, V. A. M. S., Chapter 92, Sections 92.110-92.200 .....	5, 6
Rules and Regulation to Ordinance 46222, Regulation 2 .....	3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 24, 25

**Textbook Cited.**

Graham and Katz Accounting in Law Practice, pp. 75, 287 .....	18
---	----

**BLEED THROUGH-**

# SUPREME COURT OF THE UNITED STATES.

---

OCTOBER TERM, 1953.

---

No. 389.

---

FRANK WALTERS and EDWARD WILLIAMS, JR.,  
Appellants,

vs.

THE CITY OF ST. LOUIS, JOSEPH M. DARST, Mayor,  
and DEL L. BANNISTER, Collector,  
Appellees.

---

## BRIEF FOR APPELLANTS.

---

### OPINION BELOW.

The opinion of the Supreme Court of Missouri has not yet been reported officially; it has been unofficially reported at 259 S. W. 2d 377.

### STATEMENT OF JURISDICTION.

The final judgment of the Supreme Court of Missouri was entered on July 13, 1953 (R. 62). A petition for appeal was presented to the Supreme Court of Missouri, the highest Court of that state, and allowed by the Presiding Judge thereof on September 3, 1953 (R. 63). The suit is one to declare unconstitutional an Ordinance of the City of St. Louis whereby a so-called earnings tax is levied upon appellants and to enjoin the enforcement of said Ordinance by appellees. The jurisdiction of the Supreme Court to review this decision by appeal is conferred by Title 28, United States Code, Section 1257 (2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case: **King**

**Manufacturing Co. v. City Council of Augusta**, 277 U. S. 100; **Jamison v. Texas**, 318 U. S. 413; **Independent Warehouse, Inc., v. Scheele**, 331 U. S. 70.

The federal questions to be reviewed were raised in the Court of first instance in plaintiff appellants' first pleading wherein the unconstitutionality of the Ordinance (by which said earnings tax is sought to be levied) was alleged on the grounds that it was in violation of the equal protection of the laws requirements of the Fourteenth Amendment to the Constitution of the United States (R. 6, 8). These questions were preserved for appellate review in the state court in appellants' motion for a new trial which was overruled in the trial court and were specified and briefed as assignments of error before the Supreme Court of Missouri (R. 44, 46). In Paragraphs (11), (15) and (16) of appellants' petition, the allegations are made that said Ordinance is arbitrary, unreasonable and discriminatory, and in violation of the equal protection of the laws requirements of the Fourteenth Amendment, and that appellees are attempting illegally to enforce said Ordinance (R. 6, 8, 9). These allegations were denied by appellees in their joint answer and were ruled adversely to appellants by the trial court in its decree of February 5, 1953 (R. 41, 42, 43). Furthermore, such rulings by the trial court were specified as error by appellants in Paragraphs (2) and (5) of their motion for new trial (R. 44, 45). The opinion of the Supreme Court of Missouri considered the federal questions originally presented in appellants' petition and preserved in their motion for new trial (R. 56, 57, 58, 59, 60, 61). With respect to the question of the violation of appellants' equal protection of the laws by virtue of an arbitrary and discriminatory classification whereby wage earners are taxed on gross income or gross receipts without deduction for taxes or operating expenses, and self-employed persons are taxed on a "net profits" measure with taxes (including income taxes) and operating expenses allowed as de-

ductions, the Supreme Court of Missouri found no violation of the Fourteenth Amendment on the ground that the Fourteenth Amendment was not intended to compel the states to adopt an iron rule of equal taxation (R. 60, 61).

In answer to appellants' charge that the earnings tax Ordinance 46222 was unconstitutional and violative of equal protection by virtue of a discriminatory administration against appellants-wage earners, the Missouri Supreme Court ruled adversely to appellants (R. 57, 58). As pointed out above, at the earliest opportunity in appellants' initial pleading it was alleged that the Ordinance was violative of the equal protection clause of the Fourteenth Amendment (R. 6, 8). It was also pleaded that the Ordinance empowered the Collector of the City of St. Louis to promulgate rules and regulations for the administration of the tax and that the appellees were seeking to enforce illegally said Ordinance against appellants by taking into possession funds withheld by their employer; in their prayer appellants asked that appellees be restrained from enforcing said Ordinance (R. 3, 8, 9). Appellants' original pleading was filed on September 12, 1952, in the Circuit Court of the City of St. Louis, Missouri (R. 1). In the Agreed Statement of Facts, Paragraph Three thereof, it was stipulated by the parties that some two weeks prior to the filing of this cause the appellee Del L. Bannister, Collector of the City of St. Louis, had on the day after the passage of the Ordinance—August 28, 1952—issued certain administrative and interpretative regulations pursuant to Section Nine thereof (R. 16, 17). A copy of said Ordinance and regulations was marked Exhibit "A" and incorporated by reference into the record (R. 16, 17). It was also stipulated that it was pursuant to said Ordinance (Exhibit "A") that the appellees claimed the funds withheld from appellants' wages (R. 16, 17). In Regulation 2 of Exhibit "A", issued pursuant to Section Nine of the Ordinance, the "necessary expenses" which the Ordinance

permits self-employed persons to deduct in computing their "net profits" were defined as including: (1) all necessary and ordinary business expenses; (2) all losses sustained in said business, including depreciation; (3) worthless debts arising from said business; (4) all taxes paid which were imposed by authority of the United States or any state, county, school district, or municipality; (5) all interest paid on taxpayer's indebtedness; and (6) charitable contributions not in excess of 5% of the net income (R. 22, 23). The argument was briefed before the Supreme Court of Missouri that, even if the Ordinance was valid on its face, it became unconstitutional by virtue of a discriminatory administration (R. 56, 57). Although the individual wage earner, compensated by a fixed salary, incurs expenses in connection with his job, pays a federal income and local tax, makes charitable contributions, and incurs interest, he is allowed no deductions therefor; on the other hand, the self-employed person is permitted all such deductions whether business-connected or personal. In ruling on this phase of appellants' charge, the Supreme Court of Missouri ruled that the Regulations complained of were not to be treated as part and parcel of the Ordinance; if they were to be so treated, the Court said the Ordinance would become void whenever a Collector promulgated a discriminatory regulation (R. 57). The Court concluded that it would be wholly unreasonable to declare unconstitutional an Ordinance because an administrative agency promulgated a discriminatory rule in attempting to enforce it (R. 58). As an alternate ground for ruling against appellants on the discriminatory administration of the Ordinance, the Court ruled that the question of whether the Regulations were discriminatory was not before the Court (R. 61, 62). It wrote that the action does not seek to have the Ordinance declared unconstitutional because of any administrative or enforcement rule adopted (R. 57). It also found that the incorporation of the Ordinance and Regulations into the record

and the recital that the funds of appellants' were being withheld pursuant thereto could not inject this issue into the case (R. 58).

### **QUESTIONS PRESENTED.**

1) Where an Ordinance of the City of St. Louis (Ordinance 46222) classifies taxpayers so that gross income is taxed to wage earners and "net profits" (net income after operating expenses, including income taxes) is taxed to self-employed persons, is such Ordinance unconstitutional by virtue of an arbitrary and unreasonable classification and violative of the equal protection of the laws requirement of the Fourteenth Amendment to the Constitution of the United States?

2) Where an administrative officer promulgates a discriminatory regulation to a taxing Ordinance and seeks to enforce said Ordinance under said discriminatory regulation, does the Ordinance itself thereby become void and constitutionally violative of the equal protection of the laws requirements of the Fourteenth Amendment and should the enforcement of the Ordinance be restrained?

3) Where there is an allegation that a taxing Ordinance violates the equal protection of the laws requirements of the Fourteenth Amendment and there is evidence in the record of the intentional and discriminatory administration of said Ordinance against certain taxpayers, can the Supreme Court of any state foreclose review by the United States Supreme Court of said federal question of denial of equal protection of the laws and so defeat the taxpayers' claim of federal right by so-called local practice?

### **STATUTES INVOLVED.**

House Bill No. 50, now Sections 92.110-92.200, R. S. Mo. 1949, V. A. M. S., Ordinance No. 46222, of the City of St. Louis and Regulation 2 thereof are set forth in the Appendix hereto.

### STATEMENT.

There is no issue as to the facts of the case, all of which were stipulated by counsel for the parties. Appellants Frank Walters and Edward Williams, Jr., are employed as truck drivers by the Shapleigh Hardware Company, a Missouri Corporation, whose principal place of business is in St. Louis, Missouri (R. 15). They work on an hourly rate and their gross wages, less federal withholding and social security, are paid to them on a weekly basis (R. 16). By virtue of an enabling act of the Missouri General Assembly, referred to as House Bill No. 50 and now known as Sections 92.110-92.200, R. S. Mo. 1949, V. A. M. S., the Board of Aldermen of the City of St. Louis passed a so-called earnings tax ordinance, now known as Ordinance 46222, to take effect on September 1, 1952, whereby a tax is levied upon the gross wages of appellants (R. 16, 22). The Ordinance was passed to raise revenues to meet the inadequacy of existing sources of revenue to enable the City of St. Louis to continue to function both as a city and a county (R. 20). In the fiscal year 1951-1952 the operating deficit of the city amounted to \$3,307,138 (R. 21). Established sources of revenue, absent an earnings tax, or an increase of other taxes or a levy of additional taxes, are insufficient to meet the requirements of appropriations as passed by the Board of Aldermen of the City (R. 20, 21). It is under this Ordinance enacted on August 27, 1952, and Regulations promulgated by appellee Bannister, that the appellees make claim to certain funds withheld by Shapleigh Hardware from the wages of appellants (R. 16, 17). To the date of submission of this cause Shapleigh Hardware Company had withheld \$5.35 from the wages of appellant Frank Walters and \$6.34 from the wages of appellant Edward Williams, Jr., and Shapleigh Hardware will continue to withhold one-half of one per cent from the wages of appellant until some final adjudication with re-

spect to the validity of Ordinance 46222 is obtained (R. 16). By the terms of the earnings tax ordinance, enacted consistent with said enabling act, a tax of one-half of one per cent is imposed on the gross salaries and compensation of all wage earners; it also taxes to the extent of one-half of one per cent the net profits of businesses and associations (R. 31). Section One of the Ordinance defines net profits as "the net income of any association, business or corporation remaining after deducting the necessary expenses of operation from the gross profits or earnings" (R. 34). Pursuant to Section Nine of said Ordinance, appellee Banister in his official capacity promulgated Regulation 2 (see Appendix) listing as "necessary expenses of operation" (1) all necessary and ordinary business expenses; (2) all losses sustained in said business, including depreciation; (3) worthless debts arising from said business; (4) all taxes paid which were imposed by authority of the United States or any state, county, school district or municipality; (5) all interest paid on taxpayer's indebtedness; and (6) charitable contributions not in excess of 5% of the net income (R. 22, 23). This Regulation was promulgated on August 28, 1952, about three days before the tax levy became effective and was noted as "approved" in copies of the regulations issued to taxpayers (R. 21). On September 12, 1952, appellants filed this action alleging, among other grounds, that the Ordinance was violative of the equal protection of the laws requirement of the Fourteenth Amendment to the Constitution of the United States as being arbitrary, discriminatory and oppressive. These questions were ruled adversely to appellants by Division No. 2 of the Circuit Court of the City of St. Louis in its decree of February 5, 1953 (R. 41, 42, 43). After having preserved these questions for appeal to the Supreme Court of Missouri, appellants' allegations concerning equal protection were denied by the Supreme Court of Missouri in its opinion of June 8, 1953, and overruling of appellants' motion for rehearing on July 13, 1953 (R. 47, 62).

### **SPECIFICATION OF ERRORS.**

Appellants urge as grounds for reversal of the judgment of the Supreme Court of Missouri the following specification of errors:

1) The Supreme Court of Missouri erred in holding and concluding that the classification in Ordinance 46222 taxing gross income to wage earners and "net profits" (after deducting expenses of operation, including income taxes) to self-employed persons is not arbitrary and unreasonable as against appellants wage earners, and thereby not unconstitutional and violative of the equal protection of the laws requirement of the Fourteenth Amendment to the Constitution of the United States.

2) The Supreme Court of Missouri in holding and concluding that an Ordinance is not void and constitutionally violative of the equal protection of the laws requirement of the Fourteenth Amendment to the Constitution of the United States because an administrative officer promulgated a discriminatory regulation and sought to enforce said Ordinance under said discriminatory regulation.

3) The Supreme Court of Missouri erred in holding and concluding that despite evidence in the record of the discriminatory administration of the ordinance against appellants, the denial of the equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States was not properly before it and, therefore, said Ordinance could not be held unconstitutional as violative of said Amendment.

## SUMMARY OF ARGUMENT.

A. The classification made by Ordinance 46222 taxing gross income (without deductions) from earnings to wage earners and taxing net profits to self-employed persons, partnerships, and corporations (with deductions for necessary expenses of operation, including income taxes) is an arbitrary classification violating the equal protection clause of the Fourteenth Amendment. The classification is based solely upon the legal form and manner of the particular taxpayer's exercise of his right to earn income, which has no fair relation to the announced object of the tax, i. e., the raising of revenue for the City of St. Louis to meet an existing inadequacy. Whether an employed wage earner or self-employed entrepreneur, the taxpayer occupies the same relation toward the exercise of his right to earn; the benefits and protections afforded him by the City of St. Louis are neither more nor less because of the legal form by which he chooses to exercise this right. This is the naked test which determines whether or not a taxpayer will be entitled to avail himself of the statutory deductions. Such a test is an oppressive and discriminatory one and has been so condemned in **Quaker City Cab Company v. Commonwealth of Pennsylvania**, 277 U. S. 389. The purpose of Ordinance 46222 is to raise revenue to meet the requirements of appropriations as passed by the Board of Aldermen of the City of St. Louis; its announced purpose did not contemplate that any discrimination in favor of the self-employed person would compensate for the imposition of some other tax liability upon him or intend that it would encourage persons to become self-employed entrepreneurs in St. Louis or to form partnerships. The deductions allowed the class of non-wage earners, or some practical equivalent, can just as conveniently be granted to the employed earner.

Furthermore, the patent discrimination of Ordinance 46222 is reflected by the statutory definition of the term "net profits" on which the self-employed person is taxed. By the terms of the Ordinance and Regulation 2, issued by the appellee Collector of the City pursuant to authority granted in the Ordinance, the non-wage earner is permitted to deduct as a "necessary expense of operation" all taxes, including federal, state and local income taxes; this deduction, like all other deductions, is denied the wage earner. The allowance to one class of taxpayer (the self-employed) of such a deduction for income taxes and the denial of the same deduction to another class (the employed) cannot be reasonably related to the legitimate end of the taxing Ordinance. Payment of income taxes is as necessary a forced charge and expense to the employed truck driver such as appellants as to the self-employed hauler; in both cases one must pay his income taxes in order to insure his continued ability to remain free to earn. Even the highest appellate courts of those states wherein the general classification between the wage earner and the self-employed has been approved have been careful to limit their holdings to ordinances where no deduction for income taxes is allowed to the class of self-employed persons, **City of Louisville v. Sebree**, 308 Ky. 420, 435, 214 S. W. 2d 248, 256.

B. Ordinance 46222 violates the equal protection clause of the Fourteenth Amendment by virtue of a discriminatory administration of said Ordinance against wage earners as a class and appellants in particular. It administratively bestows great tax advantages upon taxpayers who operate their own businesses while denying these same advantages to employed taxpayers. In Regulation 2 to the Ordinance, the Collector further defines the term "necessary expenses of operation," first referred to in Section One of the Ordinance. In the first three sub-paragraphs of Regulation 2, the Collector confined the deduc-

tions to business-connected expenses, as follows: (1) all ordinary and necessary expenses incurred to produce income; (2) all losses sustained in said business; (3) worthless debts arising from said business. In the last three sub-paragraphs, the limitation that the deduction be business-connected is omitted, as follows: (4) all taxes paid which were imposed by authority of the United States or any state, county, school district, or municipality; (5) all interest paid on taxpayer's indebtedness; (6) charitable contributions not in excess of 5% of the net income. Aside from the discriminatory classification set up in the Ordinance and evidenced by the first four sub-paragraphs of Regulation 2, the discriminatory operation of the Ordinance is amply demonstrated by sub-paragraphs 4, 5, and 6 of the Regulation. The deductibility of these items is not based on any relationship to the self-employed taxpayer's business, being proper deductions even if personal, such as income taxes, interest, and charitable contributions. In contrast, the wage earner cannot deduct his income tax, interest expense and charitable deductions, which may be equal to, and just as personal or as business-connected as the self-employed taxpayer's (i. e., payment of interest and financing charges on purchase of an automobile by an employed travelling salesman, which automobile is used solely on his job and was necessary to the acquisition and retention of the job is not deductible, while a mere change to a self-employed independent contractor status would make the deduction available to him). Regulation 2 is indefensible as a fair one; the administration of Ordinance 46222 under such a Regulation and the withholding of the earnings tax from appellants' wages by Shapleigh Hardware Company is an intentional and systematic discrimination against appellants and wage earners generally. When the entire taxing scheme is viewed from its over-all operational effect, the violation of equal protection is clear and renders the Ordinance unconstitutional and one whose enforcement against appellants

should be restrained. **Iowa-Des Moines Bank v. Bennett**, 284 U. S. 239; **Concordia Insurance Co. v. Illinois**, 292 U. S. 535; **Wheeling Steel Corp. v. Glander**, 337 U. S. 562.

C. The administrative operation of Ordinance 46222 under Regulation 2 is properly before this Court. The Ordinance's denial of equal protection was alleged in the pleadings under which the case was determined. Regulation 2 was made a part of the record to support appellants' claim of denial of equal protection; the Ordinance itself specifically empowered the Collector to promulgate the Regulation. This Court has frequently found it necessary to examine the application given a statute by the authorities who construe it in order to determine whether or not equal protection has been violated. **Concordia Fire Insurance Co. v. Illinois**, 292 U. S. 535; **Wheeling Steel Corp. v. Glander**, 337 U. S. 562; **Yick Wo v. Hopkins**, 118 U. S. 356. The position of the Supreme Court of Missouri (which interposed the procedural deficiency that Regulation 2 was not pleaded as an alternate ground to the denial of appellants' claim of violation of equal protection) is not a sound one in the light of the incorporation of Regulation 2 into the record and appellants' allegation that appellees were attempting to enforce the Ordinance illegally. This Court need not accept as final a state court's construction and interpretation of allegations in a complaint asserting a federal right. **Brown v. Western Ry.**, 338 U. S. 294. To hold otherwise would permit the highest court of any state to prevent the review of federal issues by the United States Supreme Court by an ad hoc application of its own rules of procedure.

### **ARGUMENT.**

**A. The Legislative Classification of Ordinance 46222 Taxing Gross Income (Without Deductions) to Wage Earners and Net Profits (With Deductions, Including Income Taxes) to Self-Employed Persons, Partnerships, and Corporations Violates the Equal Protection Clause of the Fourteenth Amendment.**

The classification made by Ordinance 46222 taxing gross income (without deductions) from earnings to wage earners and taxing net profits to self-employed persons, partnerships, and corporations, it is submitted, is an arbitrary classification violating the equal protection clause of the Fourteenth Amendment. The subject of the tax is the exercise of the right to earn income either by non-residents within the City of St. Louis or by residents of the City of St. Louis who earn income elsewhere. The tax applies equally to residents and non-residents who are subject to the taxing Ordinance. No discrimination is alleged on this basis. In view of the benefits and protection given to the non-resident taxpayer as well as the resident taxpayer by the City of St. Louis, no claim has been made that the City of St. Louis lacks jurisdiction to tax or violates equal protection by taxing non-residents. Appellants concede that the exercise of the City's police power on behalf of non-resident and resident earners (i. e., preserving to the earner his right to go to and from his place of employment subject to police and fire protection) meets the jurisdictional requirements for the exercise of the taxing power invoked. The fundamental discrimination and violation of equal protection insisted on by appellants is a classification based solely upon the legal form and manner of the particular taxpayer's exercise of his right to earn income; it is urged that such a classification, denying certain deductions to some and allowing the same deductions to others, is based

upon a difference having no substantial or fair relation to the announced object of the tax (i. e., the raising of revenue for the City of St. Louis to meet an existing inadequacy, R. 20, 21) and imposes a burden on employed wage earners from which it exempts self-employed earners, although both classes occupy substantially the same relation toward the subject matter of the taxing statute, that is, the exercise of the right to earn income.

The principles which govern the fairness of classifications made by a state in enacting tax legislation have been frequently announced by this Court. It is their application to particular fact situations, and particularly to the fact situation at hand, which causes dispute. Absolute equality in taxation is not required under the Fourteenth Amendment, **Royster Guano Co. v. Virginia**, 253 U. S. 412, and the power of the state to classify for purposes of taxation is of wide range and flexibility, **Louisville Gas Co. v. Coleman**, 277 U. S. 32. Mere difference is not enough; the classification must rest upon some ground of difference having a fair and substantial relation to the **object** of the legislation so that all persons similarly situated shall be treated alike. The test is whether the statute arbitrarily and without genuine reason imposes a burden upon one group of taxpayers from which it exempts another group, both of them occupying substantially the same relation toward the **subject matter** of the statute, **Colgate v. Harvey**, 296 U. S. 404.<sup>1</sup> There is a presumption of constitutionality favoring the taxing statute which can be overcome only by an explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes, **Madden v. Commonwealth of Kentucky**, 309 U. S. 83.

In the instant question of classification appellants submit that the application of these settled principles results

<sup>1</sup> Overruled on other grounds in **Madden v. Commonwealth of Kentucky**, 309 U. S. 83.

in the demonstration of an arbitrary discrimination as required by **Madden v. Commonwealth of Kentucky**, 309 U. S. 83. Viewing a taxing ordinance as Ordinance 46222 in question here as one whose announced object is the raising of revenue for the City of St. Louis and whose subject is the exercise of the right to earn income, appellants ask upon what difference having a substantial or fair relation to the raising of revenue is the classification based. Appellants contend that there exist differences between the classes wrought; these differences have already been noted by the highest courts of Pennsylvania and Kentucky; see **Dole v. City of Philadelphia**, 337 Pa. 375, 11 A. 2d 163, and **City of Louisville v. Sebre**, 308 Ky. 420, 214 S. W. 2d 248. But such differences as exist are not related to the raising of revenue for the City of St. Louis. Whether an employed wage earner or self-employed entrepreneur, the taxpayer occupies the same relation toward the exercise of his right to earn; the benefits and protection afforded him are no more or no less because of the legal form or character by which he chooses to exercise this right which now happens to be the subject of a tax. Whether a taxpayer under Ordinance 46222 will be taxed on gross income from earnings without deductions or net profits will depend on whether his legal relationship while earning income is that of employee or independent contractor; the "naked and complete test afforded by the statute"<sup>2</sup> is the legal form and character of the earner. Such a test is an oppressive and discriminatory one. This Court has so held in **Quaker City Cab Company v. Commonwealth of Pennsylvania**, 277 U. S. 389. In the **Quaker City Cab** case, the object of the tax was the raising of revenue for the Commonwealth of Pennsylvania. The subject of the tax was the exercise of the right to receive gross receipts by corporations engaged in the public carrier business. Persons in the public carrier business doing business as sole proprietorships or partner-

---

<sup>2</sup> **Colgate v. Harvey**, 296 U. S. 404, 424.

ships were exempt from the tax. The tax was attacked on equal protection grounds as in the instant case. In upholding the taxpayer's contention that, whether an individual, partnership or corporation, all persons in the taxicab business exercising their right to realize gross receipts occupy the same relationship toward the exercise of that right and there was no basis for different treatment of corporations, this Court rejected the character of the owner as the sole fact on which discrimination is made to depend. Although recognizing that there were differences, this Court found that they had no reasonable relation to the subject of the legislation, i. e., the exercise of the right to receive gross receipts in the taxicab business. Significantly, the tax was viewed from its practical operation and effect. It was pointed out that the tax could be laid upon receipts belonging to a natural person as conveniently as upon those of a corporation. Although the taxing statute itself set up only one class of taxpayer, that is, the corporation in the public transportation business, and treated all such corporations similarly within the class, this Court went outside the wording of the statute to its operation to find that in effect it divided those operating taxicabs into two classes, one class made express by the statute and the other inherent from its effect and operation. This Court condemned a statute which, in effect, classifies between competitors and makes the extent of their tax liability dependent upon an unreasonable standard—the legal form and character of the taxpayer-earner. Such is the standard of Ordinance 46222 which appellants submit is similarly violative of the equal protection clause of the Fourteenth Amendment. Whether the taxpayer under this Ordinance be a wage earner, self-employed independent contractor, member of a partnership or a corporation, he exercises his right to earn income with the same benefits and protections as is extended to other taxpayer-earners. The discrimination in favor of the self-employed person is

not intended to compensate for the imposition of some other tax liability upon him; the purpose of the Ordinance is to raise revenue (R. 20, 21) and not to encourage persons to become self-employed entrepreneurs in St. Louis or to form partnerships. The deductions allowed the class of non-wage earners, or some practical equivalent, can just as conveniently be granted to the employed earner.

Furthermore, the arbitrary and unreasonable classification in the instant case is made more patent by the definition given the term "net profits" in Section One of the Ordinance. "Net profits" is defined as "the net income of any association, business or corporation remaining after deducting the necessary expenses of operation from the gross profits or earnings" (R. 34). Section Nine of Ordinance 46222 empowers the Collector to adopt, promulgate, and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of the Ordinance (R. 39). Pursuant to Section Nine, the Collector issued Regulation 2, further clarifying the meaning of "net profits" by enumerating what are the "necessary expenses of operation" to be deducted from gross profits (R. 16, 22). This Regulation is incorporated into the record (R. 16, 22); apart from the operative effect of the Regulation (which will be discussed later), it represents evidence of the effect sought to be accomplished by the legislative classification. Among the deductions permitted by sub-paragraph 4 of this Regulation are all taxes paid within the year imposed by authority of the United States or its territories or possessions or under authority of any state, county, school district or municipality or other taxing subdivision of any state, not including those assessed against local benefits and inheritance taxes (R. 23). This means that the City's own interpretative Regulation (which is in evidence) contemplates that the self-employed person be permitted to deduct income taxes—

federal, state and local, even the very earnings tax in question—while the wage earner cannot deduct his income taxes. Insofar as sub-paragraph 4 of Regulation 2 allows the deduction of income taxes and other taxes in determining net profits, it is consistent with normal accounting procedure employed to determine the net profits of a particular business; income taxes are universally considered operating expenses and are deductible in determining “net profits.” All taxes are forced contributions for the support of government, and are necessary and unavoidable expenses in the conduct of any business. **Dulac Cypress Co. v. Houma Cypress Co.**, 104 So. 722, 158 La. 804; **Graham and Katz Accounting in Law Practice**, pp. 75, 287. In this respect, the Regulation is merely declaratory of the Ordinance which permits the deduction of necessary expenses of operation from gross profits and which says nothing to indicate that taxes shall not be treated in their normal sense as necessary expenses of operation. Thus the legislative classification of the Ordinance is manifestly one which, by its own terms, contemplates the deduction of income taxes by the class paying an earnings tax on net profits and the non-deduction of income taxes by the class of wage earners. Even in those cases decided by the highest courts of Kentucky and Pennsylvania, where the question of arbitrary classification between wage earners and self-employed persons was considered, the ordinances explicitly made income taxes non-deductible, see **City of Louisville v. Sebree**, 308 Ky. 420, 214 S. W. 2d 248, and **Dole v. City of Philadelphia**, 337 Pa. 375, 11 A. 2d 163, and the Kentucky Court in the **Sebree** case made a particular effort to point out that the Ordinance denied any deduction for income taxes. It is just the allowance of such a deduction in Ordinance 46222 as a “necessary expense of operation” which makes that Ordinance’s classification discriminatory by its terms; Regulation 2 is merely further evidence of the legislative intent to grant such a deduction. Appellants submit that the

allowance to one class of taxpayer of such a deduction for income taxes as a "necessary expense of operation" and the denial of the same deduction to another class cannot be reasonably related to the legitimate end of the taxing ordinance. Payment of income taxes is as necessary a forced charge and expense to the employed truck driver, such as appellants, as to the self-employed hauler; in both cases one must pay his income taxes in order to insure his continued ability to remain free to earn. Where a deduction for income taxes is allowed to a self-employed person, even the Kentucky Court of Appeals would not contend that the self-employed person's "net profits" are roughly equal to the wage earner's gross earnings, see **City of Louisville v. Sebre**, 308 Ky. 420, 435, 214 S. W. 2d 248, 256. If we assume a case where T is an employed truck driver whose gross wages are \$5,000 in 1953, and T-1 is a self-employed truck driver whose net profits before deducting federal income taxes are \$5,000, and that both will pay the same federal income tax of \$500, we see the discrimination when T must pay his earnings tax under Ordinance 46222 on \$5,000 and T-1 pays his earnings tax on \$4,500. Such oppressiveness has no relation at all to the proper object of legislation whose purpose is solely to provide revenue, not to regulate, **Royster Guano Co. v. Virginia**, 253 U. S. 412.

**B. The Discriminatory Administration of Ordinance 46222 Against Wage Earners as a Class Renders the Earnings Tax Ordinance Constitutionally Violative of the Equal Protection Clause of the Fourteenth Amendment.**

Ordinance 46222 of the City of St. Louis violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States by virtue of a discriminatory administration of said Ordinance against wage earners as a class and appellants in particular, and the appellees should be restrained from enforcing said

Ordinance against appellants. Even if the classification in the Ordinance is not arbitrary and the Ordinance is valid on its face, it becomes unconstitutional on the basis of an administrative bestowal of great tax advantages upon taxpayers who operate their own businesses while denying these same advantages to employed taxpayers. The discriminatory operation of the taxing Ordinance is fully set out in Regulation 2 (R. 22, 23). It has been stipulated that appellee Del L. Bannister, Collector of the City of St. Louis, did on August 28, 1952—three days prior to the effective date of the Ordinance—issue Regulation 2 pursuant to Section Nine of the Ordinance (R. 16, 17). A copy of the Ordinance and Regulations has been marked Exhibit "A" and incorporated by reference into the record (R. 16, 22). It has also been stipulated that it is pursuant to said Ordinance (Exhibit "A") that the appellees claim the funds withheld from appellants' wages (R. 16, 17). In Regulation 2 of Exhibit "A," issued pursuant to Section Nine of the Ordinance, the "necessary expenses" which the Ordinance permits self-employed persons to deduct in computing their "net profits" are defined as including: (1) all necessary and ordinary business expenses incurred to produce income; (2) all losses sustained in said business, including depreciation; (3) worthless debts arising from said business; (4) all taxes paid which were imposed by authority of the United States or any state, county, school district, or municipality; (5) all interest paid on taxpayer's indebtedness; and (6) charitable contributions not in excess of 5% of the net income (R. 22, 23). This Regulation is indefensible as a fair one under which the earnings tax is collected and administered. Its obvious purpose is to define the meaning of the term used in the Ordinance "necessary expenses of operation"; the Collector, unlike the Supreme Court of Missouri, was not willing to let the meaning of that concept change from time to time as "accepted methods of account change" (R. 61, ... Mo. ..., 259 S. W. 2d, l. c. 387). However,

in doing so, the Collector went even further than the Ordinance itself, where the discrimination is at least confined to taxes and other "necessary expenses of operation." Regulation 2 permits the deduction of expenses by the self-employed taxpayer in computing his "net profits" whether the expenses are business-connected or personal, such as **all** interest paid and **all** charitable contributions (R. 23). To illustrate this inequality in the operation of the Ordinance under Regulation 2, compare the tax liability of appellants with self-employed truck drivers having the same annual gross income as appellants. The self-employed truck driver, in computing his taxable income, can deduct **all** ordinary and necessary business expenses, but the employed truck driver can deduct none of his ordinary and necessary business expenses, such as union dues, chauffeur's license, and cost of work clothes. The self-employed truck driver can deduct **all** federal and state income taxes, the very earnings tax which he is paying, and **all** property taxes, real or personal; the deductibility of these taxes is not based on any relationship to the self-employed taxpayers' business, being proper deductions even if personal taxes. The employed truck driver can deduct no taxes under any circumstances. Similarly the self-employed taxpayer can deduct **all** interest paid on indebtedness and **all** charitable contributions not in excess of 5% of his net income; these items are deductible even though non-business and purely personal, for Regulation 2 makes no attempt to confine these latter deductions (specified in sub-paragraphs 4, 5, and 6) to business-connected expenses of operation as it has in the preceding sub-paragraphs of that Regulation (R. 23). But the employed truck driver can deduct no interest of any kind and no charitable deductions (R. 34, 22). Such a Regulation under which the Ordinance is being administered can only be an intentional and systematic discrimination against appellants, and wage earners generally, which renders the Ordinance void and unconstitutional as

to appellants and in violation of the equal protection clause of the Fourteenth Amendment.

This Court in analogous situations has found state tax legislation to abridge the protection of the equal protection clause, and therefore invalid, because of a particular administrative application. In **Iowa Des Moines Bank v. Bennett**, 284 U. S. 239, the facts showed an operative discrimination in the levying of an ad valorem tax on shares of stock of a national bank at 20% of actual value, while the tax upon the shares of competing moneyed domestic corporation was being levied at the rate of only 5 mills on actual value. This discrimination was the result of the acts of the county auditor who wrongfully changed assessments and extended them on his books for the competing domestic corporations at the lower figure. This Court held the favoring of others to be discriminatory and in violation of equal protection; it ordered a refund of the excess of taxes exacted from the National Bank. Similarly, in **Concordia Insurance Co. v. Illinois**, 292 U. S. 535, there was an Illinois statute taxing net receipts of foreign fire, marine and inland navigation insurance companies at the same rate as all other personal property. The evidence showed that the net receipts of these insurance companies were assessed at full value, whereas personal property in general was systematically assessed at 60% of its value with the result that the tax on the insurance companies was disproportionately high. The Supreme Court of Illinois held this action of excessive valuation as construed and applied by the state taxing authorities was valid and that the state taxing statute, when so construed and applied, did not conflict with the equal protection clause and awarded judgment against the insurance company for the full amount of the taxes claimed by Illinois. In reversing the Illinois Court, the majority of this Court concluded that there could be no reasonable basis for such a discrimination. It found that the particular application of the

statute by the state taxing authorities brought it into conflict with the prohibition of the equal protection clause. Whether a state statute is valid or invalid under the equal protection clause of the Fourteenth Amendment often depends on how the statute is construed and applied; it is under such an oppressive construction and application against appellants that appellees have promulgated Regulation 2 and seek to collect the monies now withheld by Shapleigh Hardware Company from appellants' wages. It is submitted that such enforcement should be restrained as violative of the equal protection of appellants as wage earners.

Another situation wherein this Court considered the entire taxing scheme, including administrative operation, rather than the mere wording of the statute itself, is presented by **Wheeling Steel Corp. v. Glander**, 337 U. S. 562. Here, the Department of Taxation of Ohio instituted certain policies and practices, pursuant to its own construction of the state ad valorem tax statute, whereby resident corporations were allowed exemptions not available to foreign corporations. In examining the discriminatory aspects of this tax in the light of the equal protection clause, the Court consistently referred to the over-all Ohio taxing scheme, including the taxing authorities' administrative action and policy, and ultimately held that the Department's activities in administering this tax contravened equal protection requirements, thereby rendering the tax assessments invalid. A similar administrative activity is present in the instant fact situation, wherein the Collector of the City of St. Louis promulgated Regulations to govern the collection and payment of the City Earnings Tax. Like the policies framed by the Ohio Department of Taxation in the **Wheeling** case, these Regulations prescribe exemptions for a certain class, which manifestly antagonize the equal protection clause. If the method of analysis in the **Wheeling** case is correct, and the entire taxing scheme

is the proper subject for judicial scrutiny, the Court in the instant case should consider not only the City Earnings Tax Ordinance itself, but also the effect of these detailed interpretative and operative regulations issued by the Collector which appellants contend are so grossly discriminatory.

**C. The Question of the Discriminatory Administration of Ordinance 46222 in Violation of the Equal Protection Clause of the Fourteenth Amendment Is Amply Raised by the Record and Is a Claim of Federal Right, Review of Which Cannot Be Foreclosed by So-called Local Practice.**

The Supreme Court of Missouri in its decision below concluded that the issue of discrimination effected by the Collector's Regulations was not properly raised by the pleadings, inasmuch as appellants' petition contained no such allegations in regard to the Regulations, the charge being levied solely against Ordinance 46222 and that state statute which authorized it. Hence, although it considered the question on its merits and found no discrimination, the Missouri Supreme Court interposed this procedural deficiency as an alternate ground to the denial of appellants' claim of the violation of the equal protection clause. Preliminary to a consideration of the merits of this objection, appellants call to this court's attention its own doctrine that the Supreme Court of the United States need not accept as final a state court's construction and interpretation of allegations in a complaint asserting a federal right, **Brown v. Western Ry.**, 338 U. S. 294; this should be particularly true when such local interpretation would foreclose this Court from consideration of the particular federal question, i. e., whether or not there has been a denial of equal protection of the laws. To hold otherwise would permit the highest court of any state to prevent the review of federal issues by the United States Supreme Court by an ad hoc application of its own rules of procedure.

Considering briefly the substance of the procedural objection, appellants contend that a well-pleaded challenge to the constitutionality of a revenue statute based upon a violation of equal protection under the Fourteenth Amendment brings under judicial scrutiny the entire taxing scheme established by the act. Indeed, this Court has frequently found it necessary to examine the application given the statute by the authorities who construe it in order to determine whether or not equal protection has been violated, **Concordia Fire Insurance Co. v. Illinois**, 292 U. S. 535; **Wheeling Steel Corp. v. Glander**, 337 U. S. 562; **Yick Wo v. Hopkins**, 118 U. S. 356. Not only the naked provisions of the legislative enactment, but also the effect on the taxpayer of its enforcement are raised by a claim of denial of equal protection. When, as here, the Ordinance specifically provides for the promulgation by the Collector of such Regulations to administer the tax (R. 39) and such **Regulations are made part of the record** to support the taxpayer's claim of denial of equal protection (R. 16, 17, 22-23), the statute, in its terms and operations, is before a Court whose inquiry is addressed to equal protection. There is no justification for confining the pleader's allegations of the Ordinance's violation of equal process to the formal wording of the statute as distinguished from its operational effect. (See Appellants' First Amended Petition, Paragraphs 15 and 16, R. 8, 9.)

### CONCLUSION.

For the foregoing reasons appellants request this Court to adjudge and decree that Ordinance 46222 of the City of St. Louis is illegal and void by virtue of an oppressive classification in violation of the equal protection clause of the Fourteenth Amendment, that the administrative operation of said Ordinance as against appellants renders it violative of their constitutional rights to equal protection of the laws, and that appellees be restrained and enjoined

perpetually from collecting or attempting to collect said earnings tax from appellants, and that whatever monies have been withheld from appellants' wages be returned to them.

Respectfully submitted,

STANLEY M. ROSENBLUM,  
HARRY H. CRAIG,  
A. CLIFFORD JONES,  
MERLE L. SILVERSTEIN,  
St. Louis, Missouri,  
Attorneys for Appellants.

## **APPENDIX.**

### **CHAPTER 92.**

R. S. Mo., 1949, V. A. M. S.

Taxation in St. Louis and Kansas City.

#### **92.110. Tax May Be Levied on Earnings and Profits (St. Louis).**

Any constitutional charter city in this state which now has or may hereafter acquire a population in excess of seven hundred thousand inhabitants, according to the last federal decennial census, is hereby authorized to levy and collect, by ordinance for general revenue purposes, an earnings tax on the salaries, wages, commissions and other compensation earned by its residents; on the salaries, wages, commissions and other compensation earned by nonresidents of the city for work done or services performed or rendered in the city; on the net profits of associations, businesses or other activities conducted by residents; on the net profits of associations, businesses or other activities conducted in the city by nonresidents; and on the net profits earned by all corporations as the result of work done or services performed or rendered and business or other activities conducted in the city. Laws 1951, p. ..., H. S. H. B. No. 50, Section 1.

#### **92.120. Tax Rate Limits (St. Louis).**

The tax on salaries, wages, commissions and other compensation or individuals, subject to tax, and on the net profits or earnings of associations, businesses or other activities, and corporations, subject to tax, shall not be in excess of one per centum per annum. Laws 1951, p. ..., H. S. H. B. No. 50, Section 4.

**92.130. Income Exempt From State Income Tax Not to Be Taxed (St. Louis).**

The income referred to in Sections 143.120 to 143.150, R. S. Mo. 1949, as not being subject to state income tax shall not be taxable under any tax ordinance enacted pursuant to the provisions of Sections 92.110 to 92.200. Laws 1951, p. ..., H. S. H. B. No. 50, Section 6.

**92.140. Exemptions and Deductions From Tax May Be Authorized by City (St. Louis).**

The municipal assembly of any such city may provide for deductions and exemptions from salaries, wages and commissions of employees and may provide for exemptions on account of the wives, husbands and dependents of such employees. Laws 1951, p. ..., H. S. H. B. No. 50, Section 2.

**92.150. Net Profits, How Ascertained (St. Louis).**

The net profits or earnings of associations, businesses or other activities, and corporations shall be ascertained and determined by deducting the necessary expense of operation from the gross profits or earnings. Laws 1951, p. ..., H. S. H. B. No. 50, Section 1.

**92.160. Tax Ordinance to Contain Formulae for Taxing Profits of Nonresident (St. Louis).**

The earnings or net profits subject to tax of any non-resident individual, of any association or business conducted by nonresidents, or of any corporation, in any case in which the work done, services performed or rendered, and business or other activities conducted are done, performed, rendered or conducted both within and without the city may be ascertained by formulae set forth in any ordinance enacted pursuant to sections 92.110 to 92.200

or prescribed by rules or regulations adopted pursuant to such ordinance. Laws 1951, p. ..., H. S. H. B. No. 50, Section 5.

**92.170. Employers May Be Required to Collect Tax—  
Allowance (St. Louis).**

Any such city is hereby authorized to impose upon employers the duty of collecting and remitting to the city any tax that may be levied upon the earnings of employees pursuant to sections 92.110 to 92.200, and to prescribe penalties for failure to perform such duty. In the event that any such city should impose such duty on employers, each such employer shall be entitled to deduct and retain three per cent of the total amount collected to compensate such employer for collecting such tax. Laws 1951, p. ...., H. S. H. B. No. 50, Section 7.

**92.180. Wage Brackets May Be Established (St. Louis.)**

In order to facilitate the collection of the tax herein authorized, any such city may by ordinance create wage brackets within which the tax shall be uniform for taxpayers entitled to the same number of exemptions. Laws 1951, p. ...., H. S. H. B. No. 50, Section 8.

**92.190. Tax Ordinance Not to Require Copies of Federal  
or State Income Tax Returns (St. Louis).**

No tax ordinance enacted pursuant to the provisions of sections 92.110 to 92.200 shall require any taxpayer to file copies of his state or federal income tax returns with any city officer, employee or other person designated by said ordinance to collect or otherwise administer any tax imposed thereunder. Laws 1951, p. ...., H. S. H. B. No. 50, Section 9.

**92.200. Law to Expire, When.**

The provisions of sections 92.110 to 92.200 shall expire April 1, 1954. Laws 1951, p. . . . , H. S. H. B. No. 50, Section 11.

**Ordinance 46222 of the City of St. Louis.**

An Ordinance levying and imposing an earnings tax for general revenue purposes of one-half of one per cent on salaries, wages, commissions and other compensation earned after August 31, 1952, by residents of the City of St. Louis; on salaries, wages, commissions and other compensation earned after August 31, 1952, by non-residents of the City, for work done or services performed or rendered in the City; on the net profits earned after August 31, 1952, of associations, businesses, or other activities conducted by a resident or residents of the City; on the net profits earned after August 31, 1952, of associations, businesses, or other activities conducted in the City by a non-resident or non-residents; and on the net profits earned after August 31, 1952, by all corporations as a result of work done or services performed or rendered and business or other activities conducted in the City; prescribing a formula for the ascertainment of the net profits subject to tax of any corporation, or association or business conducted in whole or in part by non-residents of the City, in any case in which the work done, services performed or rendered, and business or other activities conducted are done, performed, rendered, or conducted both within and without the City; authorizing any such taxpayer to file with the Collector an application for an alternative method of allocation or apportionment of the net profits reasonably attributable to work done, services performed or rendered, and business or other activities conducted in the City; prescribing a formula for the ascertainment of earnings subject to tax of any non-resident individual in any case in which the work done, services performed or rendered, and business or other activities con-

ducted are done, performed, rendered or conducted both within and without the City, and empowering the Collector to determine by rule or regulation a different apportionment of such earnings as are reasonably attributable to work done, or services performed or rendered in the City in cases where the services rendered are of a peculiar nature, or where the basis of compensation is unusual, or for any other reason; providing for the filing of returns and payment of the tax by individuals, associations, businesses, corporations, fiduciaries, and other entities, and for the furnishing of information by such taxpayers and by employers; imposing on employers the duty of collecting the tax at the source; prescribing the duties and powers of the Collector; providing for interest and penalties on delinquencies; providing that the divulgence of confidential information or the failure, neglect, or refusal to make any return required under this ordinance, or the failure, neglect, or refusal of any employer to withhold or pay over to the City any amount of tax subject to withholding under this ordinance, or the refusal to permit authorized examinations by the Collector, or the making, knowingly, of any incomplete, false, or fraudulent return, or the attempt to do anything whatsoever, to avoid the full disclosure of the amount of earnings or profits, shall constitute a misdemeanor; providing generally for the administration and enforcement of this ordinance and the collection of the tax; empowering the Collector to promulgate necessary rules and regulations for the administration of the tax; providing that income exempt from the state income tax laws shall be exempt from taxation under the provisions of this ordinance; authorizing every employer collecting and remitting the tax to deduct and retain therefrom three per cent (3%) of the total amount withheld by such employer; containing a separability clause; repealing Article XIV of Chapter 23 of the Revised Code of the City of St. Louis, Missouri, 1948; and containing an emergency clause.

Be It Ordained by the City of St. Louis, as follows:

Section One. As used in this ordinance, the following words shall have the meaning ascribed to them in this section, except where the context clearly indicates or requires a different meaning:

“Association”—A partnership, limited partnership, or any other form of unincorporated business or enterprise, owned by two or more persons.

“Business”—An enterprise, activity, profession, trade or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, association, or any other entity other than a corporation.

“City”—The City of St. Louis.

“Collector”—The Collector of the Revenue of The City of St. Louis.

“Corporation”—A corporation or joint stock association organized under the laws of the United States, the State of Missouri, or any other state, territory, or foreign country or dependency.

“Employer”—An individual, association, corporation, (including a corporation not for profit) governmental administration, agency, arm, authority, board, body, branch, bureau, department, division, subdivision, section or unit, or any other entity, who or that employs one or more persons on a salary, wage, commission, or other compensation basis, whether or not such employer is engaged in business as hereinbefore defined.

“Net Profits”—The net income of any association, business or corporation remaining after deducting the necessary expenses of operation from the gross profits or earnings.

“Non-resident”—An individual, association, business, corporation, fiduciary or other entity domiciled outside the City.

“Person”—Every natural person, association, business or fiduciary. Whenever the term “person” is used in any clause prescribing and imposing a penalty, the term, as applied to associations, shall mean the partners thereof, and, as applied to corporations, the officers thereof.

“Resident”—An individual, association, business, corporation, fiduciary or other entity domiciled within the City.

“Taxpayer”—A person, whether an individual, association, business, corporation, fiduciary, or other entity required hereunder to file a return of earnings or net profits, or to pay a tax thereon.

Section Two. A tax for general revenue purposes of one-half of one per centum is hereby imposed on (a) salaries, wages, commissions and other compensation earned after August 31, 1952, by resident individuals of the City, including the entire distributive share of any member of a partnership or association, less the amount thereof, if any, which may be shown to have been taxed under the provisions hereof to said association or partnership; and on (b) salaries, wages, commissions and other compensation earned after August 31, 1952, by non-resident individuals of the City, for work done or services performed or rendered in the City; and on (c) the net profits earned after August 31, 1952, of associations, businesses, or other activities conducted by a resident or residents, and on (d) the net profits earned after August 31, 1952, of associations, businesses, or other activities conducted in the City by a non-resident or non-residents; and (e) on the net profits earned after August 31, 1952, by all corporations as a result of work done or services performed or rendered, and business or other activities conducted in the City.

Said tax shall first be levied, collected and paid with respect to that portion of salaries, wages, commissions, other compensation and net profits earned after August 31, 1952, and prior to January 1, 1953, and thereafter said tax

shall be levied, collected and paid on the basis of the calendar year; provided, however, that where the fiscal year of any person, association, business or corporation differs from the calendar year, the tax shall first be applied to that portion of the net profits for the fiscal year as shall be earned after August 31, 1952, and thereafter on the fiscal year basis.

Section Three. The net profits subject to tax of any corporation, or of any association or business conducted in whole or in part by non-residents of the City, in any case in which the work done, services performed or rendered, and business or other activities conducted are done, performed, rendered or conducted both within and without the City, shall be ascertained as follows, to-wit:

(a) If such taxpayer shall keep its books and records in such a manner as to show the portion of its net profits which is reasonably attributable to work done, services performed or rendered, and business or other activity conducted in the City, then such portion of said net profits shall be subject to said tax.

(b) If the books and records of such taxpayer are not kept in such a manner so as to show the portion of its net profits which is reasonably attributable to work done, services performed or rendered, and business or other activity conducted in the City, then the portion of the entire net profits of such taxpayer subject to tax shall be ascertained by multiplying said entire net profits by an allocation percentage which shall be determined as follows, to-wit:

(1) The percentage which the average value of such taxpayer's real and tangible personal property within the City during the period covered by its return bears to the average value of all its real and tangible personal property wherever situated during such period shall first be ascertained.

(2) The percentage which the gross receipts of such taxpayer derived from business within the City during the period covered by its return bear to the total of such gross receipts wherever derived, shall then be ascertained. Gross receipts derived from business within the City shall be the amount of gross receipts from (a) sales (including also sales of services), except those negotiated or effected in behalf of such taxpayer by agents or agencies, chiefly situated at, connected with, or sent out from premises for the transaction of business owned or rented by such taxpayer outside the City, and (b) rentals or royalties from property situated, or from the use of patents, within the City.

(3) The percentage which the total wages, salaries and other personal service compensation during the period covered by its return, of its employees within the City, except general executive officers, bears to the total wages, salaries and other personal service compensation during such period of all of such taxpayer's employees within and without the City, except general executive officers, shall then be ascertained.

(4) The percentages determined in accordance with subparagraphs 1, 2 and 3 above, or such of the aforesaid paragraphs as shall be applicable to the particular taxpayer's business, shall be added together and the total so obtained shall be divided by the number of percentages used in arriving at said total. The result so obtained shall be the allocation percentage.

(c) If any such taxpayer believes that the methods of allocation or apportionment hereinbefore prescribed have operated or will so operate as to subject it to taxation on a greater portion of its net profits than is reasonably attributable to work done, services performed or rendered, and business or other activities conducted in the City, it shall be entitled to file with the Collector a statement of its

objections and of such alternative method of allocation or apportionment as it believes to be proper under the circumstances and in such manner and with such detail and proof and within such time as the Collector may reasonably prescribe; and thereupon if the Collector shall conclude that the methods of allocation or apportionment hereinabove provided are in fact inapplicable or inequitable, he shall redetermine the net profits subject to tax by such other method of allocation or apportionment as seems best calculated to assign to the City for taxation the portion of the net profits reasonably attributable to work done, services performed or rendered, and business or other activities conducted in the City, not exceeding, however, the amount which would be arrived at by the application of the methods of allocation or apportionment hereinabove provided.

Section Four. The earnings subject to tax of any non-resident individual, in any case in which the work done, services performed or rendered, and business or other activities conducted are done, performed, rendered or conducted both within and without the City, shall be ascertained as follows, to-wit:

(a) If the amount of such earnings depends on the volume of business transacted by such individual, then the portion of such earnings subject to tax shall be the portion of such earnings which the volume of business transacted by such individual in the City bears to the volume of business transacted by him within and without the City.

(b) In all other cases, the portion of such earnings subject to tax shall be the portion of such earnings which the total number of working days employed within the City bears to the total number of working days within and without the City.

(c) If it is impracticable to apportion such earnings as aforesaid either because of the peculiar nature of the services of such individual, or on account of the unusual basis

of compensation, or for any other reason, then the amount of such earnings reasonably attributable to work done, or services performed or rendered, in the City, shall be determined in accordance with rules or regulations adopted or promulgated by the Collector for the purpose.

Section Five. Except as hereafter provided each individual, association, business, corporation, fiduciary, or other entity, whose earnings or profits are subject to the tax imposed by this ordinance shall, on or before March 30th of each year, unless an extension is granted by the Collector, make and file with the Collector a return, on a form obtainable from the Collector, setting forth the aggregate amount of salaries, wages, commissions, compensation or net profits earned by such taxpayer during the preceding calendar year and subject to said tax, together with such other pertinent information as the Collector may require:

Provided, however, that where the return is made for a fiscal year different from a calendar year, the said return shall be made within ninety days from the end of the fiscal year, unless an extension is granted by the Collector. Such return shall also show the amount of the tax imposed by this ordinance on such earnings and profits. The taxpayer making the said return shall, at the time of filing thereof, pay to the said Collector the amount of tax shown as due thereon:

Provided, however, that where any portion of the tax so due shall have been deducted at the source and shall have been paid to the Collector by the employer making the said deduction, credit for the amount so paid shall be deducted from the amount shown to be due, and only the balance, if any, shall be due and payable at the time of the filing of said return:

Provided, further, that no return shall be required of any taxpayer who has received only wages, salaries, commis-

sions or other compensation and from which the tax has been withheld at the source, as hereinafter provided. The failure of any employer or any taxpayer to receive or procure a return form shall not excuse such employer or taxpayer from making a return or paying the tax due.

**Section Six.** Every employer within the City who employs one or more persons on a salary, wage, commission, or other compensation basis, shall deduct at the time of the payment thereof the tax of one-half of one per centum of salaries, wages, commissions or other compensation due by the said employer to the said employee and subject to tax, and shall make his return monthly and pay to the said Collector, not later than the last day of each month, the amount of taxes so deducted for the calendar month next preceding the month in which the return is required to be filed. Said return shall be on a form or forms obtainable from the Collector and shall be subject to the rules and regulations prescribed therefor by the said Collector. Every such employer shall furnish each employee with a statement of the amount of the tax withheld. The failure of any employer to deduct or withhold at the source the amount of the tax due from the employee shall not relieve the employee from the duty of making a return and paying the tax.

**Section Seven.** Every employer collecting and remitting the tax herein provided for on any resident or non-resident employee shall be entitled to deduct and retain three per centum of the total amount so collected as compensation to the employer for collecting and remitting the tax.

**Section Eight.** The income referred to in Sections 143.120 to 143.150, R. S. Mo. 1949, as not being subject to the state income tax shall not be taxable under this ordinance.

**Section Nine.** It shall be the duty of the Collector to collect and receive the tax imposed by this ordinance. In addi-

tion to keeping the records now required by law and paying over the proceeds from the collection of taxes to the treasurer of the City, as now provided by law, the Collector shall keep an accurate and separate account of all such tax payments received by him, showing the name and address of the taxpayer and the date of the payments. The Collector is hereby charged with the enforcement of the provisions of this ordinance and is hereby empowered to adopt and promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this ordinance, including provisions for the re-examination and correction of returns and payments alleged or found to be incorrect or as to which an overpayment or underpayment is claimed or found to have occurred.

The Collector or any agent or employee authorized in writing by him is hereby authorized to examine the books, papers and records of any employer or supposed employer, or of any taxpayer or supposed taxpayer, in order to verify the accuracy of any return made, or if no return was made, to ascertain the tax imposed by this ordinance. Every such employer or supposed employer, or taxpayer or supposed taxpayer, is hereby directed and required to give to the said Collector or his duly authorized agent or employee the means, facilities and opportunity for such examinations and investigations as are hereby authorized.

The Collector is hereby authorized to examine any person concerning any income which was or should have been returned for taxation and to this end may order the production of books, papers and records and the attendance of all persons before him, whether as parties or witnesses, whom he believes to have knowledge of such income. The refusal of such examination by any employer or taxpayer shall be deemed a violation of this ordinance. Any information obtained as a result of any return, investigation, hearing or

verification required or authorized by this ordinance, shall be confidential except for official purposes and except in accordance with judicial order. Any person otherwise divulging such information shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be subject to a fine of not more than Five Hundred Dollars (\$500.00) or imprisonment for not more than six (6) months or both such fine and imprisonment for each offense.

Section Ten. All taxes imposed by this ordinance and remaining unpaid after they have become due shall bear interest at the rate of six per cent (6%) per annum, and the delinquent taxpayer shall be liable for said tax and interest, and, in addition thereto, to a penalty of one per cent (1%) of the amount of the unpaid tax for each month or fraction of a month for the first six (6) months of delinquency.

Section Eleven. All taxes imposed by this ordinance, together with all interest and penalties, shall be recoverable by the City as other debts of like amounts are recoverable.

Section Twelve. Any person or taxpayer who shall fail, neglect, or refuse to make any return required by this ordinance, or any employer who shall fail, neglect or refuse to withhold or pay over to the City any amount of tax subject to withholding hereunder, or any person or taxpayer who shall refuse to permit the Collector, or his duly authorized deputy or agent, to examine his books, records, or papers, or who shall knowingly make an incomplete, false, or fraudulent return, or who shall attempt to do anything whatsoever to avoid the full disclosure of the amount of earnings or profits, shall be deemed guilty of a misdemeanor and shall be subject to a fine of not more than Five Hundred Dollars (\$500.00) or to imprisonment for not more than six (6) months, or to both such fine and imprisonment.

Section Thirteen. If any sentence, clause or section or any part of this ordinance is for any reason held to be un-

constitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this ordinance. It is hereby declared to be the intent of the Board of Aldermen that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included therein.

Section Fourteen. Article XIV of Chapter 23 of the Revised Code of the City of St. Louis, Missouri, 1948, is hereby repealed.

Section Fifteen. This being an ordinance fixing a tax rate, an emergency is hereby declared to exist within the meaning of Section 20 of Article IV of this Charter of the City of St. Louis, and this ordinance shall be effective immediately upon its passage and approval by the Mayor.

Approved: August 28, 1952.

### **Rules and Regulations to Ordinance 46222.**

#### **2. Definitions.**

1. Wages shall include salaries, wages, commissions, and other compensation for personal services.

Wages, when not paid for in money, will be measured by the fair market value of the merchandise, stock, bonds, room or board, or other considerations given to the employee.

2. Net Profits. The net income of any association, business or corporation remaining after deducting the necessary expenses of operation from the gross profits or earnings.

1. All of the ordinary and necessary expenses incurred to produce said income, including rentals or other payments

required to be made as a condition to the continued use or possession of property to which the taxpayer has not taken or is not taking title, or in which the taxpayer has no equity;

2. All losses, actually sustained in said business, including a reasonable allowance for exhaustion, depreciation, obsolescence, or wear and tear of property in said business;

3. Debts arising from said business actually ascertained to be worthless and charged off within the year;

4. All taxes paid within the year imposed by authority of the United States or its territories or possessions, or under authority of any state, county, school district or municipality or other taxing subdivision of any state, not including those assessed against local benefits and inheritance taxes.

5. All interest paid within the year on taxpayer's indebtedness.

6. Contributions or gifts made by the taxpayer within the taxable year to corporations, associations and societies organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children and animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, to an amount not in excess of 5 per centum of the amount of the taxpayer's net income on which tax is paid.

No. 389.

SUPREME COURT OF THE UNITED STATES.

---

October Term, 1953.

---

FRANK WALTERS and EDWARD WILLIAMS, JR.,  
Appellants,

vs.

THE CITY OF ST. LOUIS, JOSEPH M. DARST,  
Mayor, and DEL L. BANNISTER, Collector,  
Appellees.

---

**CERTIFICATE OF SERVICE.**

Receipt is hereby acknowledged of two copies of the  
brief of Appellants in the above-entitled cause on Monday,  
January 11, 1954.

John P. McCammon,  
Attorney for Appellees.